

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2006 DEC 15 PM 12:45

Docket No.: SDWA-08-2006-0066

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:

English Feedlot, Inc.

Respondent.

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)
) **CONSENT AGREEMENT**
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Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, English Feedlot, Inc. (Respondent), by their undersigned representatives, hereby consent and agree as follows:

1. EPA issued to Respondent a Proposed Order and Penalty Complaint with Notice of Opportunity for Hearing (Complaint) filed on or about September 26, 2006, alleging certain violations of Part C of the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300h et seq., relating to underground injection controls (UIC).

2. The Complaint alleged that Respondent violated the SDWA by (a) failing to comply with 40 C.F.R. §144.12(a) and 40 C.F.R. §144.82(a)(1) by operating and maintaining a Class V disposal facility which, through injection activity, allowed the movement of fluid containing any contaminant into underground sources of drinking water, where the presence of that contaminant may cause a violation of any primary drinking water regulation or may adversely affect the health of persons under 40 C.F.R. part 142; and (b) failing to comply with 40 C.F.R. §144.12(c)(1) and (2) and 40 C.F.R. §144.88(b) for failure to timely close or retrofit the Class V disposal system in a manner that would keep

contaminants from entering an underground source of drinking water (USDW). The location of the facility is at 14111 County Road #2, Wiggins, CO 80654. Respondent has provided evidence to EPA that the Class V disposal system has been permanently closed.

3. Respondent admits that EPA has the jurisdictional authority to issue the Complaint and settle this case pursuant to this Consent Agreement, but does not admit or deny any other allegations in the Complaint.

4. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint, or this Consent Agreement.

5. This Consent Agreement, upon incorporation into a final consent order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

6. Respondent consents and agrees to pay a civil penalty in the amount of seventeen thousand five hundred dollars (\$17,500.00), in the manner described below.

EPA finds this penalty amount is appropriate after applying the statutory factors in section 1423(c)(4)(B) of the SDWA with the facts and circumstances of this case.

7. Respondent consents to pay the seventeen thousand five hundred dollars (\$17,500.00) penalty two equal installments as follows:

1st payment of \$8,750 due on December 29, 2006;

2nd payment of \$8,750 due on June 29, 2007.

8. Respondent consents and agrees to make each and all installments referenced in the preceding paragraph in the manner described below in this paragraph:

- a. **Payment is due on the date stated in paragraph 7 of this CA** as ordered by the Regional Judicial Officer in the Final Order that adopts this CA. The date the installment payment is made is considered to be the date processed by the Bank described below. Payments received by 11:00 AM. EST are processed on the same day, those received after 11:00 AM are processed on the next business day.
- b. The installment payment shall be made by remitting a cashier's or certified check, including the **name** and **docket number of this case payable to the "Environmental Protection Agency,"** to:

Regular Mail:

Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other commercial carrier:

U.S. EPA, 360859
Mellon Client Service Center Rm 154-0670
500 Ross Street
Pittsburgh, PA 15251-6859

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68010727

A copy of the check shall be sent simultaneously to:

Marc Weiner
Enforcement Attorney
U.S. EPA Region 8 (Mail Code: 8ENF-L)

1595 Wynkoop
Denver, CO 80202-1129

and to

Tina Artemis
Regional Hearing Clerk
U.S. EPA Region 8 (Mail Code: 8RC)
1595 Wynkoop
Denver, CO 80202-1129

c. **In the event that any one installment payment is not received by the specified due date, interest accrues from the date of the final consent order, not the specified installment due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e., on the 1st late day, 30 days of interest accrues).**

d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the due date of the 1st installment payment, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the due date of the 1st installment payment). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

9. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the SDWA and its implementing regulations.

10. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

11. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty

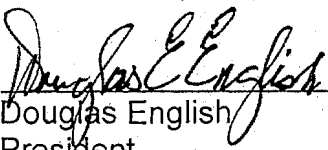
associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

12. The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the party he or she represents to the terms and conditions of this Consent Agreement.


13. Each party shall bear its own costs and attorney fees in connection with this matter.

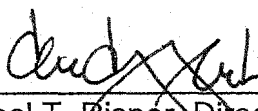
14. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.


ENGLISH FEEDLOT, INC., Respondent

Date: 12-4-06 By: 
Douglas English
President

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Complainant**

Date: 12/11/06 By: 
for Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Date: 12/11/06 By: 
Michael T. Risner, Director
David Janik, Supervisor
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 12/11/06 By: 
Marc Weiner, Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **ENGLISH FEEDLOT, INC., DOCKET NO.: SDWA-08-2006-0066** was filed with the Regional Hearing Clerk on December 15, 2006.


Further, the undersigned certifies that a true and correct copy of the document was delivered to Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on December 15, 2006, to:

Elizabeth A. Mitchell
Jeffrey R. Becker
Holland & Hart LLP.
555 Seventeenth Street, Suite 3200
P. O. Box 8749
Denver, CO 80201-8749

Telefaxed to:

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268
513-487-2063

December 15, 2006


Tina Artemis
Regional Hearing Clerk/Paralegal



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